

Norfolk County Council

Record of Individual Cabinet Member Decision

Responsible Cabinet Member: Cllr Thomas (Cabinet Member for Adult Social Care, Public Health & Prevention)

Background and Purpose:

Norfolk County Council is legally required to ensure provision of statutory advocacy for vulnerable adults.

The right for people who lack capacity to an independent mental capacity advocate and the responsibility to commission independent mental capacity advocacy is given in the Mental Capacity Act 2005. S.35 of this Act required local authorities to make “reasonable arrangements” for provision of mental capacity advocates.

Independent mental health advocacy services were introduced in 2007 to safeguard the rights of people detained under the Mental Health Act 1983 (amended) and those on community treatment orders (CTOs). Under The Health and Social Care Act 2012, the duty to commission mental health advocacy passed to local authorities.

Local authorities must make appropriate arrangements for independent advocacy services to provide assistance to people making or intending to make complaints about NHS treatment and services as required under The Health and Social Care Act 2012, S.185.

The Care Act 2014 parts 67 and 68 require that an independent advocate must be made available by a local authority if a person would have substantial difficulty in understanding and being involved in key social care processes including assessment, care planning and safeguarding enquiries and reviews.

The current contract for statutory advocacy, which is held by the provider organisation POhWER, will expire on 30th June 2024. It is planned to undertake an open market procurement for a new contract to be offered for three years with the potential to extend for another two lots of two years, for new provision which will start on July 1st 2024. The plan is to open the procurement on January 9th 2024.

Decision: To agree that the statutory advocacy service can be tendered as per the proposal and timescale in this paper

Is it a key decision? Yes

Is it subject to call-in? Yes

If Yes – the deadline for call-in is: 4pm, Tuesday 2 January 2024

Impact of the Decision:

The Council is legally required to provide statutory advocacy. Provision of statutory advocacy supports the needs of people in our communities with significant disabilities and disadvantages including mental illness, learning disabilities, dementia and lack of capacity. The provision of statutory advocacy is impactful because it enables health and social care processes, redresses imbalances of power and supports people to achieve positive outcomes.

Evidence and reason for the decision:

Norfolk County Council is legally required to ensure provision of statutory advocacy. It is recommended that an open market procurement is undertaken for a contract which is offered for three years and the potential to extend for another two lots of two years, for new provision which will start on July 1st 2024.

The provision of statutory advocacy is impactful because it enables health and social care processes, redresses imbalances of power and supports people to achieve positive outcomes.

Through the history of the contract (aside from periods covered by and immediately after Covid lockdown) the tendency has been for growth in demand and use of this service.

Robust ideas and delivery proposals will be required from bidders as part of the submission process around the ability to provide good quality timely advocacy.

Alternative options considered and rejected:

The government had been planning to change the law and introduce Liberty Protection Safeguards in place of Deprivation of Liberty Safeguards. In the light of this it would not have been a good time to have gone out to procurement with a risk that there would be a change in provider during a period of significant change in legislation. To reflect this, the arrangement for statutory advocacy had been noted on the procurement pipeline at Cabinet in April 2023 with the commissioning intention to “extend current arrangement pending new Code of Guidance for LPS”.

Introduction of Liberty Protection Safeguards has now been set aside and there is no reason to delay tendering the contract.

Financial, Resource or other implications considered:

The proposed approach will be to procure the statutory advocacy service for three years, with provision to extend for two periods of two years. The annual value of the current contract is £675,328. The value of the new contract over the 3 year term will be £2,025,984. The value of the contract over a full 7 year

period will be £4,727,296. The contract will also be subject to any annual inflationary uplift agreed and applicable to community advice services.

The duties to provide statutory advocacy and the level of investment in the service to meet demand are long standing.

Record of any conflict of interest: None.

Background documents:

- None

Date of Decision: 21/12/23

Publication Date of Decision: 21/12/23

Signed by Cabinet Member:

I confirm that I have made the decision set out above, for the reasons also set out.

Signed: Cllr Alison Thomas

Print name: Cllr Alison Thomas

Date: 15/12/23

Accompanying documents:

Once you have completed your internal department clearance process and obtained agreement of the Cabinet Member, send your completed decision notice together with the report and green form to committees@norfolk.gov.uk

Individual Cabinet Member Decision Report

Item No:

Report Title: Procurement for statutory advocacy

Date of Meeting: N/A

Responsible Cabinet Member: Cllr Alison Thomas (Cabinet Member for Adult Social Care, Public Health & Prevention)

Responsible Director: Name and Job Title: Debbie Bartlett, Interim Executive Director Adult Social Services

Is this a Key Decision? Yes

If this is a Key Decision, date added to the Forward Plan of Key Decisions: This was put on the forward plan as a delegated key decision on the 21 November.

Executive Summary / Introduction from Cabinet Member

Norfolk County Council is legally required to ensure provision of statutory advocacy for vulnerable adults. The current contract will expire 30th June 2024. It is planned to undertake an open market procurement from January 4th 2024 for a new contract to be offered for three years with the potential to extend for another two lots of two years, for new provision which will start on July 1st 2024.

Recommendations:

To agree the proposal to re-procure a statutory advocacy service to meet the timescales proposed in this paper (which are for a tender process to start on Jan 4th 2024 to enable a new contract for the service from July 1st 2024).

1. Background and Purpose

1.1 Statutory advocacy encompasses the provision of advocacy for people in health and social care settings where someone does not have an appropriate family member or friend to support them. As described at 8.1 below, Norfolk County Council has legal duties to ensure these services are provided. The service comprises the following types of advocacy:

1.2 **Independent Mental Capacity Advocacy** - IMCAs provide a legal safeguard for people who lack capacity in safeguarding processes and in making specific and important

decisions such as where they live or whether to have serious medical treatment. Statutory advocacy is most often instructed where the person concerned sets and directs the priorities for the advocate. It can also be non-instructed, where the person being advocated for lacks mental capacity and therefore cannot direct the advocate in some or all of the decisions.

1.3 Paid Representatives. These advocates work with people who are in health and care settings where they are deprived of their liberty. The role of a Relevant Person's Paid Representative (RPPR) is to maintain contact with the person and to represent and support them in all matters relating to the Deprivation of Liberty Safeguards (DoLS). This support has to be completely independent from the care providers of the services they are receiving.

1.4 Independent Mental Health Advocacy (IMHA). There are various circumstances through which patients qualify for an IMHA but in the main it is used by people detained under the Mental Health Act or subject to Community Treatment Orders.

1.5 Care Act Advocacy (Independent Social Care Advocacy) must be available to support someone who does not have an appropriate family member or friend who can support them and would have 'substantial difficulty' in taking part in social care assessment, carer's assessment, care planning or a safeguarding investigation without assistance.

1.6 NHS Health Complaints Advocacy. The responsibility for commissioning independent NHS complaints advocacy was transferred from health to local authorities in 2013. This service provides practical support and information to anybody who wishes to make an NHS complaint including support to use the Ombudsman.

1.7 POHWER has been the lead and main provider since the last procurement in 2016. Aside from the period of COVID lockdown the pattern has been one of increased demand and use for the statutory advocacy services.

2. Proposal

2.1 The current contract for statutory advocacy will expire on 30th June 2024. It is planned to undertake an open market procurement for a new contract to be offered for three years with the potential to extend for another two lots of two years, for new provision which will start on July 1st 2024. The plan is to start the procurement on January 9th 2024.

3. Impact of the Proposal

3.1 The Council is legally required to provide statutory advocacy. Provision of statutory advocacy supports the needs of people in our communities with significant disabilities and disadvantages including mental illness, learning disabilities, dementia and lack of capacity. The provision of statutory advocacy is impactful because it enables health and social care processes, redresses imbalances of power and supports people to achieve positive outcomes.

4. Evidence and Reasons for Decision

4.1 Norfolk County Council is legally required to ensure provision of statutory advocacy. The plan is for an open market procurement to be undertaken for a contract which is offered for three years and the potential to extend for another two lots of two years, for new provision which will start on July 1st 2024.

4.2 In addition to the legal requirements to provide statutory advocacy there is evidence from monitoring of the service and from feedback from County Council staff and others that the provision of statutory advocacy helps people achieve good individual outcomes. It positively supports health and social care practitioners to make the right decisions for and with people because it enables their views and voices to be heard in care planning processes. Statutory advocacy provides one important level of protection and safeguarding for people who are very vulnerable.

5. Alternative Options

5.1 The government had been planning to change the law and introduce Liberty Protection Safeguards in place of Deprivation of Liberty Safeguards. In the light of this it would not have been a good time to have gone out to procurement with a risk that there would be a change in provider during a period of significant change in legislation. To reflect this, the arrangement for statutory advocacy had been noted on the procurement pipeline at Cabinet in April 2023 with the commissioning intention to “extend current arrangement pending new Code of Guidance for LPS”.

5.2 Introduction of Liberty Protection Safeguards has now been set aside and there is no reason to delay tendering the contract.

6. Financial Implications

6.1 The proposed approach will be to procure the statutory advocacy service for three years, with provision to extend for two periods of two years. The annual value of the current contract is £675,328. The value of the new contract over the 3 year term will be £2,025,984. The value of the contract over a full 7 year period will be £4,727,296. The contract will also be subject to any annual inflationary uplift agreed and applicable to community advice services.

6.2 The duties to provide statutory advocacy and the level of investment in the service to meet growing demand are long standing.

7. Resource Implications

7.1 **Staff: None.** This is a commissioned service. There are no implications for County Council staff.

7.2 Property: None. There are no property implications for Norfolk County Council from this procurement.

7.3 IT: None. There are no IT implications for Norfolk County Council from this procurement.

8. Other Implications

8.1 Legal Implications:

Norfolk County Council is legally required to ensure provision of statutory advocacy for vulnerable adults.

The right for people who lack capacity to an independent mental capacity advocate and the responsibility to commission independent mental capacity advocacy is given in the Mental Capacity Act 2005. S.35 of this Act required local authorities to make “reasonable arrangements” for provision of mental capacity advocates.

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The Care Act 2014 parts 67 and 68 require that an independent advocate must be made available by a local authority if a person would have substantial difficulty in understanding and being involved in key social care processes including assessment, care planning and safeguarding enquiries and reviews.

8.2 Human Rights Implications: None. There are no human rights implications from this procurement.

8.3 Equality Impact Assessment (EqIA) (this must be included):

Q1 What possible inequalities could be experienced by diverse groups seeking to access this service or part of this service? Diverse groups are:

- Men, women and transgender people
- People of different faiths or no faith
- People’s sexuality
- People with a disability, impairment or long-term health condition
- People of different ages

- People from different ethnic or cultural backgrounds, including Gypsies and Travellers
- People who care for other people

The statutory advocacy services are by nature key resources, entitlements and forms of support for very disadvantaged people across the diversity range. Primarily statutory advocates enable people to understand and take part in decisions about their care and treatment.

Q2. What process will you use to work with diverse groups to decide upon workable and appropriate solutions to tackling the above issues?

The expectation that the provider offers an accessible service to all sections of communities is built into the specification which forms part of the contract.

Q3. How will you demonstrate that the solutions you put in place have resulted in better outcomes for diverse groups?

Through regular reporting and monitoring of the delivery of statutory advocacy.

8.4 Data Protection Impact Assessments (DPIA): Not relevant. This is a commissioned service. There are no DPIA implications arising from this procurement.

8.5 Health and Safety implications (where appropriate): Not relevant. This is a commissioned service. There are no health and safety implications arising from this procurement.

8.6 Sustainability implications (where appropriate): Not relevant. There are no health and safety implications arising from this procurement.

8.7 Any Other Implications: None

9. Risk Implications / Assessment

9.1 There would be significant risk to vulnerable individuals if the service was not provided. There would also be a high risk of legal challenge.

9.2 All for the preparation for the planned procurement has been completed and is ready to go. If the procurement timetable were to be delayed for any reason the County Council would need to seek agreement from the current service provider to extend the current service on a short term basis and seek an exemption to enable this.

10. Select Committee Comments

11. Recommendations

1. To agree the proposal to re-procure a statutory advocacy to meet the timescales proposed in this paper (which are for a tender process to start on Jan 4th 2024 to enable a new contract for the service from July 1st 2024).

12. Background Papers: None

Officer Contact

If you have any questions about matters contained within this paper, please get in touch with:

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If you need this report in large print, audio, braille, alternative format or in a different language please contact 0344 800 8020 or 0344 800 8011 (textphone) and we will do our best to help.